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Court : Patna

Decided On : Mar-17-1993

Judge : S.B. Sinha, J.

Acts : Evidence Act, 1872 - Sections 92

Appeal No. : Civil Writ Jurisdiction Case No. 3787 of 1991

Appellant : Mohan Rai and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : B.P. Verma, Akhilesh Kumar Sinha, J.C. to Standing Counsel (Ceiling), Harendra Prasad Singh and Brajesh Sharma, Advs.

Advocate for Pet/Ap. : A.B. Mathur and Mritunjay Kumar Jha, Advs.

Disposition : Application allowed

Judgement :

S.B. Sinha, J.

1. This application is directed against the resolution dated 10-5-1991 passed by the Member, Board of Revenue in case No. 448 of 1990, as contained in Annexure-3 to the writ application, whereby and where-under, he set aside the orders dated 27-6-1990 passed by the Collector (respondent No. 3} as also the

order dated 22-9-1989 passed by the Deputy Collector, Land Reforms (respondent No. 4) in terms whereof an application for pre-emption filed on behalf of the petitioners was rejected.

2. The fact of the matter lies in a very narrow compass.

3. The petitioners purchased the lands in question by reason of registered deed of sale dated 15-6-1981. The respondent No. 5 (pre-emptory) filed an application for pre-emption in terms of Section 16(3) of the Bihar Land

Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land Act, 1961 (hereinafter referred to as 'the Act') claiming himself to be an adjoining raiyat. The petitioners also claimed themselves to be the adjoining raiyats as according to them, in terms of three deeds of sale dated 28-10-1977, 2-9-1977 and 16-8-1979, they had purchased the adjoining lands. The petitioners further contended that they had been possessing the lands in questions as Bataidars for a long time. The plea put forward by the petitioners found favour with respondents 3 and 4, However, the Member, Board of Revenue by reason of the impugned order held that in view of the fact that in the deed of sale dated I5-6-I98I, the petitioners have not been shown to be holding any land on the boundaries of the vended land, their plea of being the adjoining raiyats cannot be accepted.

4. Mr. Mathura, learned counsel appearing on behalf of the petitioners has raised a short question in support of this application. Learned counsel submitted that in view of the fact that the petitioner's plea found favour with the courts below, the Member, Board of Revenue, in exercise of his jurisdiction under Section 35 of the Act should not have reversed the said decisions. Learned counsel further submitted that even a plan of the area was filed before the respondenl No. 4 by reason whereof it was proved that the petitioners were the adjoining raiyats.

5. Mr. Harendra Prasad Singh, learned

counsel appearing for respondent No. 5, on the other hand, submitted that the reasoning adopted by the Member, Board of Revenue cannot be said to be perverse. It was further submitted that in any event, the petitioners are not the

adjoining raiyats and the same would be evident from the recitals made in the aforementioned deed of sale dated 15-6-1981. According to learned counsel, in view of the provisions contained in Section 92 of the Indian Evidence Act, no evidence was admissible which would run counter to the stipulations made in the deed of sale.

Learned counsel in support of his contention has relied upon a recent Division Bench decision of this Court in Smt. Madalsa Devi

v. Mridula Chandra reported in (1993) 1 Pat LJR 50.

6. It is now well known that the right of pre-emption is a weak right. The said right of pre-emptor can, therefore, be defeated by the vendee by contending that he has a better claim over the land either by reason of his being a co-sharer or adjoining raiyat of his vendor.

7. Section 92 of the Indian Evidence Act reads as follows :--

'Exclusion of evidence of oral agreement -- When the terms or any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives-in-inter-est, for the purpose of contradicting, varying, adding to, or subtracting from its terms.'

Section 92, therefore, merely prohibits admission of oral evidence which would be contrary to the terms of any contract, grant or other disposition of property. The name of the persons who are possessing the lands on the boundaries of the vended land are not part of the stipulations of the grant. The names of the persons who are on the boundary of the vended lands are necessary to be recited only for the purpose of identification of the land in question. In my opinion, therefore, Section 92 of the Evidence Act does not bar consideration of any documents filed by the petitioners for the purpose of proving that they in fact were the boundary raiyats. In any event, by reason of Section 92 of the Indian Evidence Act, adduction of oral evidence only is prohibited and not the documentary evi-dence.

8. In Madalsa Devi's case (1993 (1) Pat LJR 50) (supra) the Division Bench was concerned with the terms of the deed of lease. Even in that case, it was found that in terms of proviso (6) to Section 92 of Indian Evidence Act, oral evidence was admissible. Madalsa Devi's case, therefore, does not advance the contention of the respondent No. 5.

9. For the reasons aforementioned, I am of the view that the learned Member, Board of Revenue should have considered the materials brought on record by the petitioners in their proper perspective. By non-considering on the relevant facts, the Member, Board of Revenue must be held to have misdirected himself in law.

10. In the result, this application is allowed and the impugned resolution dated 10-5-1991 as contained in Annexure 3 to the writ application is set aside and the matter is remanded to the Member, Board of Revenue for a fresh decision in accordance with law.

11. The parties may appear before the Member, Board of Revenue within three weeks from the date of receipt of acopy of this judgment. In the facts and circumstances of the case, there will be no order as to costs.

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